

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 1, 2012

In the Matter of O. JOHNSON, Minor.

No. 306065
Genesee Circuit Court
Family Division
LC No. 09-125526-NA

Before: BORRELLO, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (g), (h), and (j). We affirm.

The trial court did not clearly err by finding that the statutory grounds set forth in §§ 19b(3)(g) and (j) had been proved by clear and convincing evidence.¹ MCR 3.977(H)(3)(a); MCR 3.977(K); see also *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000). Respondent was jailed for a controlled substance offense when the child was less than a month old and left the child with the mother, a heroin addict. Respondent has been continuously incarcerated since July 2009. He was advised of the need to engage in counseling, substance abuse treatment, and parenting classes. Due to his misconduct in prison, respondent's security level was increased and he became ineligible for any prison services. At the time of the hearing, respondent had yet to complete substance abuse treatment. In addition, he was serving a new prison sentence and would not be eligible for parole for between 18 months and five years. The trial court did not clearly err by determining that respondent would be unable to provide proper care and custody for the child for the foreseeable future or that it was reasonably likely that the child would be harmed if returned to respondent's care.

Respondent's argument that termination was improper because he was not provided with services is without merit. In most cases, the DHS is obligated to make reasonable efforts to reunify the child with his or her family by providing reunification services. MCL 712A.19a(2); *In re Mason*, 486 Mich 142, 156; 782 NW2d 747 (2010). This obligation is not excused when a parent is incarcerated. While the DHS cannot refer an incarcerated parent to social service

¹ Only one statutory ground need be established to terminate a respondent's parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

agencies for services, it must inform the parent of the need to engage in particular services or contact a prison social worker regarding the parent's need for services. *Id.* at 156-158. The record shows that a parent-agency agreement was established for respondent identifying the services he required. Moreover, the foster-care worker indicated that she communicated with respondent regarding the need for services, and respondent testified that he was aware of the need to participate in services. The evidence also showed that respondent had begun substance abuse treatment; before that, he had made himself ineligible for services by misconduct that resulted in a change of his security classification in prison. On the record before us, we simply cannot conclude that the DHS failed to provide respondent with sufficient services.

Nor did the trial court clearly err by finding that termination was in the child's best interests. MCL 712A.19b(5); MCR 3.977(H)(3)(b); MCR 3.977(K). Respondent has been incarcerated for all but the first month of the child's life, has not seen the child for at least a year and a half, and will remain incarcerated for the next 18 months to five years. He has no bond with the child and will be unavailable to provide her with permanency in a reasonable amount of time.

Respondent contends that termination was premature because the court failed to consider whether his relatives could care for the child in the future. We disagree. If a child is living with relatives when the case proceeds to termination, that is a factor to be considered in determining whether termination is in the child's best interests. See *Mason*, 486 Mich at 163. But the court may still order termination in lieu of placement with relatives if it finds that termination is in the child's best interests. *In re IEM*, 233 Mich App 438, 453; 592 NW2d 751 (1999); *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991). In this case, the child was not living with relatives and respondent never indicated that he wanted the child placed with his relatives. Rather, he indicated that, upon his release from prison, he wanted to raise the child himself with assistance from his parents. We perceive no error by the trial court with respect to this issue.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen